

**ZONING BOARD OF APPEALS**

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ZBA 2012-04

Petition of David Himmelberger
9 Spruce Park

Record Owner of Property: 9 Spruce Park Inc.

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, January 5, 2012, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of DAVID HIMMELBERGER requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a 17 foot 5 inch by 18 foot 2 ½ inch two-story addition over an existing deck, construction of a second story addition over an existing garage and mudroom that will meet all setback requirements, and construction of a 4 foot 6 inch by 11 foot front entry, on an existing nonconforming structure with less than required front yard setbacks, at 9 SPRUCE PARK, in a 10,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On December 19, 2011, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was David Himmelberger, Esq. (the "Petitioner"), who said that he was representing 9 Spruce Park Inc., whose principals are Mike Labelle and Sheri Hoffman. He said that also present were Robert May, Architect and Michael DeRosa, Wetlands Consultant.

Mr. Himmelberger said that the Petitioner is seeking a Special Permit because there is an existing nonconforming front yard setback. He said that the proposal is to build above the existing footprint. He said that there will be no expansion of the existing footprint except for a front vestibule of less than 50 square feet. He said that a second floor is proposed over the garage and a build out of a first and second floor over an existing deck.

Mr. Himmelberger said that the plan is to dress up two existing front dormers by changing them to gabled dormers.

Mr. Himmelberger said that the property is located within 100 feet of Caroline Brook but wholly outside of the 25 foot no disturb zone. He said that the only work that is proposed within the 75 foot limited disturbance area is the replacement of four existing posts that support the rear deck. He said that they will be replaced with techno-metal posts that will be screwed into the ground. He said that there will be no disturbance to the ground, no concrete pumping, no holes dug or backfilling.

Mr. Himmelberger said that they are scheduled to go before the Wetlands Protection Committee (WPC) on January 26, 2012.

Mr. Himmelberger asked that the Board vote its decision at this hearing to allow the project to move forward in tandem with the WPC review. He said that they are fairly confident of getting the WPC approval because the disturbance only involves replacement of existing posts in the Limited Disturbance Zone. He said that the project also includes construction of a rain garden at the rear of the property to further treat the existing runoff. He said that there will be no additional runoff. He said that the rain garden will be planted with local native species. He said that invasive species will be removed.

Mr. Himmelberger said that there will be no construction equipment in the Limited Disturbance Zone with the exception of the device that screws in the posts, which is the equivalent of a small lawn tractor.

Mr. Himmelberger said that they believe that the project is an appropriate one and will not be substantially more detrimental to the neighborhood. He said that the Total Living Area plus Garage (TLAG) for the house will be well below the threshold for Large House Review (LHR). He said that the building height at the front is 21 feet. He said that there will not be substantial massing.

Mr. Himmelberger said that it was initially determined the FEMA had no elevation for the Floodplain, as noted on a revised plot plan. He said that subsequently it was discovered that the Town had its own figures from 1973. He said that the elevation of the floodplain in that area is 130 feet in the brook. He said that none of the house is within the floodplain, only a portion of the property. He submitted a revised plot plan.

The Board asked about the house elevation. Mr. Himmelberger said that it is significantly higher. He said that it is 138-139 feet at the first floor. The Board said that the basement is eight feet less than that and is close to the elevation of the floodplain.

The Board said that the rain garden was not shown on any of the plans that were submitted. Mr. Himmelberger said that it is shown on the plans to be submitted to the WPC. He submitted a plan to the Board.

The Board said that the A4 elevation drawing shows the proposed gabled dormers. The Board said that the side elevation drawing A6 shows a shed dormer.

The Board said that on Plan A1, the columns are shown as attached to the vestibule. The Board said that the roof shown on A6 extends well beyond the columns.

The Board said that the windows on the proposed work on the second floor are higher than the windows on the existing house. The Board said that creates more of a separation of existing and new construction. Mr. May said that the windows could be lowered.

The Board said that the existing garage does not have any windows. The Board said that when building a second floor addition with only two windows, it presents a blank wall to the neighbor, as shown on Plan A6. Mr. May said that there will be landscaping on that side. The Board said that the topography drops off and there is a lot of basement shown. Mr. Himmelberger said that the neighbors on that side are not at

a parallel line. Mr. May said that they could add windows below the windows in the proposed master bedroom.

The Board said that the bylaw allows an enclosed or unenclosed entrance porch on the first floor that does not exceed 50 square feet. The Board questioned if the vestibule would be considered a porch. The Board said that it looks like an extension of the interior of the house with two closets. The Board said that, as shown on Plan A1, it appears to be more like a part of the house rather than uninhabited space of a porch, which is less of a structure. The Board said that it appears to be a means to increase the entrance way.

Mr. Himmelberger said that the proposed structure meets all of the conditions in Section XIX.A of the Zoning Bylaws.

The Board said that if there were no coat closets within the vestibule, Mr. Himmelberger's argument would be strong. The Board questioned how that would be any different from 50 square feet in the first floor of the house once a closet is put in there.

Mr. Himmelberger discussed Zoning and regulation of interior space.

The Board said that the bylaw discusses porches, which would typically be a screened porch or a farmers porch. Mr. Himmelberger said that there is language in the bylaw that talks about enclosed porches.

The Board said that upon entering the door that is closest to the street, there is no door that is exterior to the face of the house. The Board said that it is simply an opening. The Board asked how that can be separated from the rest of the first floor. Mr. May said that door swing would be a problem in a four foot space.

Ms. Hoffman said that they put the vestibule on because almost every house in Wellesley has a vestibule. She said that the existing closet is very small. The Board said that on many homes in Wellesley, the vestibule is not within the setback area.

The Board asked why the porch is 11 feet wide. Mr. Himmelberger said that it scales nicely to the structure.

The Board said that the bylaw talks about enclosed and unenclosed porches. Mr. Himmelberger said that there will be no excavated area beneath it which lends credence to its being a porch rather than an extension of the house.

The Board asked about the shaded area that is shown in front of the vestibule on Plan A1. Mr. May said that it is a landing with a step. He said that there is a 3 ½ foot existing walkway that they will try to tie into the proposed construction.

Margaret Sarginson, 8 Spruce Park, said that she wanted to be reassured that the footprint of the garage wall will not be extended closer to her property. She said that she appreciated the comment that a solid blank wall will loom over her house.

Mr. Himmelberger said that installation of the new posts will cause minimal disturbance. He said that the homeowner is willing to have the windows over the garage match the height of the existing windows. He said that they will submit a revised plan to show that. He said that they will submit a revised A6 Plan that will show the gabled dormers. He said that the overhang on the vestibule will be scaled back to be no more than .7 of a foot. He said that they will add two windows to the elevation shown on Plan A6. He said that the windows will be below the two upper story windows. The Board said that placement of those windows should be up to the discretion of the architect. The Board said that the elevation drawing should show pilasters rather than free-standing columns on the vestibule.

The Board asked about the floor treatment in the porch. Mr. May said that the tile will end at the existing threshold.

Mr. Himmelberger questioned if the decision could not be recorded until the WPC permit was issued and the appeal period had run. The Board said that the Special Permit would issue in the normal course. The Board said that the decision could be recorded after the twenty-day appeals period lapsed.

Statement of Facts

The subject property is located at 9 Spruce Park, in a 10,000 square foot lot, with a minimum front yard setback of 29.8 feet.

The Petitioner is requesting a Special Permit/Finding that construction of a 17 foot 5 inch by 18 foot 2 ½ inch two-story addition over an existing deck, construction of a second story addition over an existing garage and mudroom that will meet all setback requirements, and construction of a 4 foot 6 inch by 11 foot front entry, on an existing nonconforming structure with less than required front yard setbacks, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 12/8/11, revised 12/27/11 & 1/5/12, stamped by Paul J. Donohoe, Professional Land Surveyor, existing and proposed Floor Plans and Elevation Drawings, dated 12/9/11, prepared by Robert E. May Jr., and photographs were submitted.

On January 4, 2012, the Planning Board reviewed the petition and recommended that the Special Permit be deferred.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the finding of this Authority that construction of a 17 foot 5 inch by 18 foot 2 ½ inch two-story addition over an existing deck, construction of a second story addition over an existing garage and mudroom that will meet all setback requirements, and construction of a 4 foot 6 inch by 11 foot front entry, on an existing nonconforming structure with less than required front yard setbacks, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as it shall neither increase an existing nonconformity nor create a new nonconformity.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for construction of a 17 foot 5 inch by 18 foot 2 ½ inch two-story addition over an existing deck, construction of a second story addition over an existing garage and mudroom that will meet all setback requirements, and construction of a 4 foot 6 inch by 11 foot front entry, on an existing nonconforming structure with less than required front yard setbacks, subject to the following conditions:

1. The means of construction of the supporting posts shall minimize any disturbance in the wetlands portion of the property.
2. A ruling from the WPC approving the design as submitted to the Zoning Board of Appeals and the expiration of all periods of appeal have run.
3. The agreed changes and revised plans shall be submitted to the Board.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

J. Randolph Becker, Acting Chairman

Robert W. Levy

David G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm